

## ORPHANS' COURT DIVISION RULE 12.16F

### **RULE 12.16F.      COMPROMISE OR SETTLEMENT OF SURVIVAL** **ACTIONS**

#### **Sec. 1.      Petitions.**

Whenever a personal representative, who has a right of action to recover damages under the Survival Statutes and who has not brought suit, wishes to compromise or settle such a claim, whether or not any claim has been made for damages under the Wrongful Death Statute, the personal representative shall present his petition to the Orphans' Court Division for approval of the compromise or settlement. The petition shall contain the following averments:

(a) the name, age, state of health, residence and date of death of the decedent and whether the decedent died testate or intestate;

(b) the name of the personal representative, the date of the personal representative's appointment, that letters were granted and duly advertised, and the amount of bond, if any;

(c) the occupation of the decedent at the time of the decedent's death, the salary and average earnings, the name of the decedent's employer and address if the decedent was not self-employed;

(d) the names of all heirs or next of kin (noting those dependent upon the decedent) and whether they are *sui juris*, together with the names of their guardians, if any;

(e) the names and addresses of all creditors who have or had claims against the estate, whether or not they have been paid, and, if paid, by whom;

(f) a brief recital of the facts constituting the cause of action;

(g) a statement of reason for the proposed compromise or settlement, the amount thereof, including the amount of counsel fees and legal expenses, and the proposed apportionment between the survival action and the wrongful death action, if any; and

(i) that notice of the presentation of the petition has been given to all parties in interest who do not join.

The prayer of the petition shall be for approval of the compromise or settlement.

**Sec. 2. Exhibits.**

The following exhibits shall be attached to the petition:

- (a) a copy of the will, if any;
- (b) an affidavit of service of notice;
- (c) the joinder of all parties who consent.

**Sec. 3. Hearing.**

When the averments of the petition require it, the Court upon its own motion or upon the request of any party in interest, will set a date for hearing.

**Sec. 4. Distribution.**

Distribution of the amount received in compromise or settlement of a survival action shall be made in accordance with Rule 6 or Rule 12.16A of these Rules.